

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID WALKER, et al.,

Plaintiffs,

vs.

OREM CITY, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION
IN LIMINE TO EXCLUDE
PHOTOGRAPHS OF A .38 CALIBER
CHIEF'S SPECIAL

Case No. 2:02-CV-253 TS

Defendant Peterson's pretrial disclosures indicate that he intends to introduce photographs of a .38 caliber chief's special, as well as the gun itself. Plaintiffs argues that the photographs are unnecessary, duplicative, and is likely to mislead or confuse the jury, since the gun itself will be admitted.

Defendant Peterson argues that the Motion should be denied because he may chose not to introduce the actual gun. Additionally, any potential confusion can be negated by testimony about the photographs.

Fed.R.Evid. 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed . . . by considerations of undue delay, waste of time,

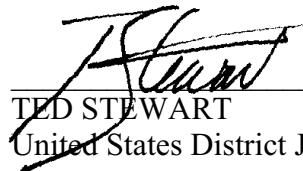
or needless presentation of cumulative evidence.” If the actual gun is admitted into evidence, introduction of photographs of that gun would be unnecessary cumulative and the Court would likely exclude such evidence. However, as indicated, Defendant may choose not to introduce the actual gun and may instead rely on the photographs along with testimony. As a result, the Court is unable to determine this issue outside of the context of trial.

It is therefore

ORDERED that Plaintiff’s Motion in Limine to Exclude Photographs of a .38 Caliber Chief’s Special (Docket No. 268) is DENIED WITHOUT PREJUDICE and the issue may be revisited in the context of trial if and when Defendant seeks to admit the exhibits at issue.

DATED October 4, 2007.

BY THE COURT:



TED STEWART
United States District Judge